IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2547 OF 2004

Shashikant B. Vashi and anr. ... Petitioners

Vs.

B.M.C. and Ors. ... Respondents

Mr. S. Vasudeo i/by M.P. Vashi for Petitioner.

Mr. O.J. Menezes with Mr. K.R. Parekh for
Respondent Nos. 4 and 5.

Mrs. A.R. Joshi for Respondent Nos. 1 to 3/B.M.C.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 18, 2004

P.C.

1. Rule. By consent heard forthwith.

2. Subsequent to the order of this court dated 24.10.2002 in Writ Petition No. 1983 of 2002, the Respondent No. 3 has passed the order. By that order, objections raised by the Petitioner that there was a change of user of Flat No. 3 and garage from residential to religious purposes has been rejected. A finding has been recorded that Flat No. 3 on ground floor is predominantly used for residential purposes and internal changes like removal of partition wall have been made by the Trust and it does not amount to F.S.I. violation. So far as garage is concerned, it is set out that the matter is subjudice before the City Civil Court.

3. At the hearing of this petition, on behalf of the Petitioner, their learned counsel points out that in the earlier affidavit filed before this court by Shri. Anand B. Bhandawdekar dated 23.10.2002, the affiant therein had set out that at the inspection carried out on 16.10.2002, it had been observed and detected that in Flat No. 3 meant for residential purpose was being used for religious purpose and so also a garage was being used for religious purpose. It is submitted that in the impugned order no reference is made to that inspection report neither is there any material to show that on the subsequent inspection carried out the change of user no longer subsists. Various other contentions have been raised including as to whether the contesting respondents could have applied under the provisions of the M.R.T.P. Act on the notice being issued under Section 42 as the only remedy to the parties was to move under Section 44 of the said Act.

4. On the other hand on behalf of the Respondents, it is contended that the order does not suffer from any error apparent on the face of record. It is pointed out that the Respondent No. 3 has proceeded on the footing that the premises are not used for religious purposes and are being used for residential purposes. It is therefore, submitted that there is no question of the private respondents applying under Section 44 for

regularisation.

5. After hearing the learned counsel, in my opinion ends of justice will be met if the impugned order is set aside and the matter is remanded back for re-hearing. The reason being that the order does not disclose whether subsequent to the affidavit filed in this court on 23.10.2002 any fresh inspection was carried out and based on that inspection, the impugned order came to be passed. That would be necessary considering the earlier inspection report. It is only in the event that the use has subsequently been discontinued, the order in the nature of impugned order could be passed. The issue as to whether the pendency of the suit would restrain the Respondent No. 3 from exercising jurisdiction in respect of the garage need not be gone into at this stage. There is no injunction granted by the court restraining any of the parties. It will be therefore, open to the Respondent No. 3 in exercise its powers under the M.R.T.P. Act and to pass appropriate order according to Law.

6. On behalf of the private Respondent, their learned counsel points out that the allegations have been against the parties who have not been joined to the Petition. The contention by the learned counsel will have to be accepted. If the allegations in the nature as made out in the

petition are to be accepted, then the parties against whom such allegations have been made have to be heard considering the office that they hold in the B.M.C. Considering the order to be passed that issue need not be gone into for the present.

7. In the light of the above, the following order :

. The impugned order dated 6.7.2004 is quashed and set aside. The matter is remanded to the concerned Authority to hear both the parties and to pass appropriate orders according to law within sixty days from today.

. Rule made partly absolute in aforesaid terms.

. P.A. to issue authenticated copy of this order and all parties to act on the same. C.C. expedited.

(F.I. REBELLO,J.)